

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

KENNY CARTER,

Petitioner,

v.

SUPERINTENDENT LAKEVIEW
CORRECTIONAL FACILITY,

Respondent.

ORDER
05-CV-147S

1. On March 3, 2005, Plaintiff filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254.

2. On July 25, 2005, Respondent filed a Motion to Dismiss Petitioner's Petition. On December 5, 2005, this Court referred this case to the Honorable H. Kenneth Schroeder, Jr., United States Magistrate Judge, for all pretrial matters including report and recommendation on dispositive motions.

3. On December 29, 2005, Judge Schroeder filed a Report and Recommendation recommending that Respondent's Motion to Dismiss be granted and that Petitioner's Petition for Writ of Habeas Corpus be dismissed without prejudice based on his failure to exhaust his state remedies.

4. On January 11, 2006, Petitioner filed Objections to Judge Schroeder's Report and Recommendation in accordance with 28 U.S.C. § 636(b)(1)(C) and Local Rule 72.3(a)(3). Respondents filed a letter in opposition to Petitioner's Objections on February 3, 2006. On February 7, 2006, Petitioner filed a Motion to Expedite and Amend his Petition. On February 22, 2006, Petitioner filed a reply in further support of his Objections to the Report and Recommendation.

5. This Court has thoroughly reviewed this case *de novo* and has considered Judge Schroeder's Report and Recommendation, Petitioner's Objections thereto and the applicable law. Upon due consideration, this Court will accept Judge Schroeder's recommendation, grant Respondent's motion, and dismiss Petitioner's Petition for Writ of Habeas Corpus without prejudice for the reasons stated in the Report and Recommendation. Petitioner's Objections are therefore denied.

IT HEREBY IS ORDERED, that this Court accepts Judge Schroeder's December 29, 2005 Report and Recommendation (Docket No. 11) in its entirety, including the authorities cited and the reasons given therein.

FURTHER, that Petitioner's Objections (Docket No. 12) are DENIED.

FURTHER, that Respondent's Motion to Dismiss (Docket No. 6) is GRANTED.

FURTHER, that Petitioner's Petition for Writ of Habeas Corpus (Docket No. 1) is DISMISSED without prejudice.

FURTHER, that Petitioner's Motion to Expedite and Amend (Docket No. 15) is DENIED as moot.

FURTHER, that the Clerk of the Court is directed to close this case.

SO ORDERED.

Dated March 8, 2006
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge